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CHLOPAK LEONARD SCHECHTER
AND ASSOCIATES

Kenya

Memorandum

To Department of Justice
From Chlopak, Leonard, Schechter & Associates
Registration number 5774
Date August 19, 2009
Re Distributing Advisories for Foreign Agents

The attached E-Alert was sent out to members of the American Radio Media on August 18, 2009.

MEDIA AVAILABILITY – Professor Ronald Slye, member of Kenyan Truth, Justice and Reconciliation Commission

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Ever since the Government of President Mwai Kibaki came to power in December 2002, there has been a persistent clamour for the establishment of a truth and reconciliation commission aimed at addressing past injustices in Kenya. The inspiration for this quest was the South African Truth and Reconciliation Commission, which successfully buried the ghost of the apartheid atrocities and allowed the country to forge forward into a future without bitterness.

In April 2003, President Kibaki appointed a task force to assess the need for a truth commission. In its final report in August 2003, the task force recommended that a Truth, Justice and Reconciliation Commission (TJRC) be established.

After the violence and political unrest that threatened to destabilize Kenya in the aftermath of its contested presidential elections in late December 2007, a round of negotiations beginning in late January 2008, known as the Kenya National Dialogue and Reconciliation, were initiated.

Involved in those negotiations were Kenyan Government leaders, former Secretary General of the United Nations, Kofi Annan, the United States, and other members of the international community who called for the formal creation of the recommended TJRC to inquire into human rights violations in Kenya. These included violations committed by the state, groups, or individuals, between 1963 and 2008.

Just one month ago, in an unprecedented step toward creating an impartial commission, the members of the TJRC were selected entirely by civil society and faith-based organizations. These selections were approved by President Kibaki who recently named Ambassador Bethuel Kiplagat as Chairman. In addition to Ambassador Kiplagat, nine other commissioners were appointed including Betty Murungi, a Harvard-trained human rights lawyer as Vice Chairperson and international expert, Professor Ronald Slye from the University of Seattle.

From 1996 – 2000, Professor Slye served as a legal consultant to the South African TJRC. He is currently a law professor at the University of Seattle and is in transition to Nairobi where he will carry out his appointment as one of three international experts on this panel.

Currently, the Commission is in its three-month preparatory period and will begin hearing testimony later this year. To shed some more light on the purpose, strategy and methods of the Commission, we are offering interviews with Professor Ronald Slye. If interested, please contact me at lmendelson@clsdc.com or 202-777-3561.

This material is distributed by Chlopak, Leonard, Schechter & Associates on behalf of the Office of the President of the Republic of Kenya. Additional information is available at the Department of Justice, Washington, DC.

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SECRETARY CLINTON
AND AGOA FORUM

AUGUST 19, 2009

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Working to Preserve Peace and Security

An Important Regional Ally

Kenya, with the help of many international allies, has strengthened its security efforts to prevent the spread of regional conflict. Surrounded by conflict-ridden countries, Kenya has developed military taskforces dedicated to monitoring borders and preventing terrorist attacks. More recently, Kenya has increased its counterterrorism efforts in the wake of Al-Qaeda-linked insurgent uprisings in neighboring Somalia.

Confronting Terrorism in the Region

- Counterterrorism efforts were strengthened after two Al-Qaeda operatives carried out attacks on U.S. Embassies in Nairobi and in Dar-es-Salaam, Tanzania in 1998.
- The rising power of a militant group called al-Shabab in neighboring Somalia has also added a new security challenge in the region.
- Al-Shabab was founded by Al-Qaeda-trained Somali radicals. It currently has a strong presence in southern and central Somalia.

Counter-Terrorism Resources and Training

- The Kenyan Army worked with the United States to develop a Ranger Strike Force, which includes operations against infiltrators and armed groups.
- The Kenyan Air Force has F-5 fighter aircraft to conduct maritime and counterterrorism surveillance and strike operations.
- The Kenyan Navy received training and equipment from the United States for maritime interdiction operations in territorial waters.

Military Strength by the Numbers

- Manpower available for military service:
 - Males age 16-49: 9,044,685
 - Females age 16-49: 8,805,736
- Manpower fit for military service:
 - Males age 16-49: 5,935,480
 - Females age 16-49: 5,667,755
- Military expenditures: 2.8 percent of GDP in 2006

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America's Ally in East Africa

Kenya/U.S. Relations

For decades, Kenya and the United States have enjoyed a mutually beneficial relationship. Immediately following independence, the U.S. sought to establish diplomatic relations and soon after opened the U.S. Embassy in Nairobi on December 12, 1963. To date, Kenya's relations with the United States remain warm.

Americans Living in Kenya

- More than 9,000 U.S. citizens have taken residency in Kenya. Nearly two-thirds of the American residents are missionaries and their families.
- More than 89,400 Americans visited Kenya in 2008.

American Assistance

- The United States provides substantial assistance to Kenya, promoting broad-based economic development as the basis for continued progress in political and social areas.
- Through the United States Agency for International Development (USAID), Kenya received about \$462 million in 2006/2007.
- USAID has effectively supported a number of trade promotion activities through the East Africa Trade Hub in Nairobi.
- The Overseas Private Investment Company (OPIC) is seeking a strategic partnership with the Kenyan private sector to undertake investment opportunities in the housing market.
- The United States assistance strategy is founded on five main objectives:
 - Improving healthcare
 - Fighting poverty and promoting prosperity
 - Advancing democratic values, human rights and good governance
 - Fighting insecurity and terrorism
 - Collaborating to foster peace and stability in East Africa

Joining Forces in Somalia

- For over a decade, Kenya has served as America's ally against Islamic extremism spreading across the Horn of Africa.
- The United States provides equipment and training to Kenyan security forces, both civilian and military to help combat terrorist threats.
- The joint effort by the United States and Kenya has prevented clan and militia fighting in Somalia from spreading across the border and into other countries in the region.

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Kenya: The Hub of Eastern Africa

A Home for the United Nations

- o Kenya is one of the *only* developing countries that hosts United Nations (UN) agencies headquarters.
- o In 1970, the United Nations Environment Program (UNEP) became the first UN agency to be headquartered in Kenya. Shortly after, the United Nations Human Settlement Program (UN-HABITAT) took up residence in Nairobi.
- o Currently, there are 26 UN agencies operating in Kenya, comprising a total of 75 semi-autonomous UN offices employing some 3,000 local and international staff. These agencies include but are not limited to the following:
 - o World Bank (WB)
 - o International Monetary Fund (IMF)
 - o United Nations Development Program (UNDP)
 - o United Nations High Commissioner for Refugees (UNHCR)
 - o United Nations Funds for Women (UNIFEM)
 - o Office of the Coordination on Humanitarian Affairs (OCHA)
 - o World Health Organization (WHO)

Center of African Aid and International Assistance

Kenya is a clearing house for large amounts of foreign assistance, most of which is distributed through non-governmental organizations (NGOs) that have offices in Nairobi. Some examples include the following:

- o CARE – in operation in Kenya since 1968 working to provide emergency relief and poverty reduction services at the household level.
- o Save the Children – opened in Kenya in 1984 and continues to work on long-term development projects on HIV/AIDS, exploitation and abuse, conflict and disaster, and education.

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- o Oxfam – established in Kenya in 1963 and works to support subsistence farmers in Western Kenya and the Coast, pastoralists in northern Kenya, and in informal urban settlements in Nairobi and Mombasa.

Headquarters for Independent NGO's

Over 6,000 non-governmental organizations reside in Kenya including several independent non-profit organizations that work to establish successful programs in areas including health, education, human rights, and security. Some include the following:

- o The Ford Foundation – providing grants and loans for peace and social justice, asset building and community development, knowledge, creativity and freedom.
- o The Aga Khan Foundation – opened its doors in Kenya in 1974 focusing primarily on health, education and culture, rural and economic development in Kenya.
- o SOS-Kinderdorf International – founded in 1971 to provide homes, education, social and health services to orphaned and neglected children.

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Kenya's Efforts to Combat Global Piracy

Key International Leader in Prosecuting Piracy

In 2006, Kenya established the Maritime Rescue Center in the port city of Mombasa, designed to provide a rapid response to acts of piracy. As one of the only countries in East Africa to have the legislative power to prosecute pirates, several countries are calling for piracy cases to be prosecuted in Mombasa.

The United States, Britain and European Union have signed agreements allowing for piracy suspects to be tried in Kenya. Additionally, several countries are discussing the possibility of setting up a special piracy tribunal in Kenya akin to the International Criminal Court at The Hague.

Strong Anti-Piracy Laws

- Kenyan piracy laws state that any person in territorial waters or upon the high seas who commits any act of piracy is guilty of the offense.
- Under the current law, any person who is guilty of the offense of piracy is liable to imprisonment for life.
- Under the Kenyan constitution, the High Court of Kenya has the jurisdiction to try any Kenyan or non-Kenyan for piracy offenses.

Enhancing Anti-Piracy Resources and Training

- The U.S. military's Combined Joint Task Force-Horn of Africa (CJTF-HOA) collaborated with the Antiterrorism Assistance programs to train Kenyans on maritime operations training.
- In April 2009, Kenya signed an agreement to allow the United States to install radiation sensors at the Mombasa seaport. The sensors will detect nuclear or radiological materials that could be shipped to ports around the world, including within the United States.
- The Maritime Police Unit and other agencies received equipment and training for coastal security from the State Department's Antiterrorism Assistance program to monitor the high seas. This important collaboration between Kenya and the U.S. government serves as one of America's first lines of defense against terrorist threats around the world.

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AGOA Improves Kenyan-U.S. Trade Relations

What AGOA Offers Africa

The African Growth and Opportunity Act (AGOA), enacted in 2000, offers opportunities for increased trade and economic cooperation between the United States and eligible sub-Saharan countries by providing unprecedented access to the U.S. market. AGOA provides reforming African countries with the same access to the U.S. market as countries that have an established Free Trade Agreement with the United States. Current beneficiaries of AGOA include the Republic of Congo, Ghana, Nigeria, Senegal, Rwanda, Togo, Tanzania and Kenya, among others.

Kenya's Growth Under AGOA

Bilateral trade between Kenya and the U.S. is largely governed by AGOA. Kenya was among the first countries to qualify to export under AGOA in 2001 and since then, the exports, mainly textiles and apparels, have dominated the composition of trade to the United States. Apparel exports under AGOA have tripled from 2001 to 2006 and more than 190,000 Kenyans are gainfully employed as a result of AGOA. Under AGOA, Kenya has increased employment, provided extra income for urban and rural workers, and boosted its economy. Yet, trade between Kenya and the U.S. has been in favor of the U.S., as Kenya imports more from the American market than it exports.

Kenya – U.S. Trade Under AGOA

- Since AGOA, Kenya's exports to the United States have increased from \$41 million in 2001 to \$326 million in 2007.
- While exports to the U.S. have increased, so too have imports from the United States. In 2006, Kenya exported approximately \$353 million to the U.S. and imported approximately \$516 million.
- Kenya's exports to the U.S. are relatively lower-priced goods and commodities such as tea, textiles, apparels, pyrethrum, handcrafts, and processed nuts.
- Since the enactment of AGOA, textiles and apparels have dominated the composition of Kenya's exports to the U.S. and constituted about 76 percent of the total exports in 2007.

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- U.S. exports to Kenya have generally been manufactured high-value goods such as aircraft parts, machinery, electronic equipment, pharmaceuticals, organic chemicals, plastics, and fertilizers.

Key Kenya Challenges Regarding AGOA

The Kenyan private sector intends to use the upcoming AGOA forum to address key issues constraining Africa's access to U.S. markets including:

- Attaining technical assistance to build local institutional capacities to ensure Kenyan producers comply with American animal and plant health standards.
- Addressing strict market requirements, inadequate financing for exporters, and the absence of assistance to identify trade opportunities.
- Ensuring sustainability of AGOA after the framework expires in 2015.
- Addressing AGOA linked bills such as the New Partnership for Development Act (NPDA) that erodes gains made from AGOA by extending duty free and quota free market access to least developed countries like Bangladesh and Cambodia.

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A Stable Government

A Record of Good Governance

Since independence from Britain in 1963, the Kenyan government has been a model for stability in the region. In 2002, the United States Department of State commended Kenya for initiating a "re-emergence of multiparty democracy and the accompanying increase in freedom (including freedom of speech, the press, and assembly)."

Given their long-standing government stability, the unrest that resulted from the disputed elections in December 2007 was particularly surprising to many international authorities and Kenyans alike. Government officials moved to resolve the conflict through a power-sharing agreement brokered by the former United Nations Secretary General, Kofi Annan.

National Accord and Grand Coalition Government

- The National Accord and Reconciliation Act of 2008 stated that a power-sharing coalition was needed to move the country forward. The coalition required a strong partnership and commitment from both sides.
- Under the agreement, Raila Odinga was granted the position of prime minister and Mwai Kibaki was granted the position of president.
- The appointments of cabinet members and justices were conducted under a system of checks-and-balances to ensure the coalition government was collaborating.
- The 42-member cabinet is the largest in Kenya's history. It includes new ministries for cooperative development, Northern Kenya development, and Nairobi metropolitan development.

Steps towards Reconciliation

Kenya has made significant strides in the last year:

- Establishing the Kriegler Commission to investigate the election process and implement its recommendations to ensure voter integrity.

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- o Launching the Waki Commission and several attempts to establish a local tribunal that will put an end to impunity.
- o Dissolving the Electoral Commission of Kenya [ECK] that oversaw the disputed elections, thus paving the way for electoral reforms, including the establishment of the Independent Interim Electoral Commission of Kenya [IECK] and the Interim Boundary Review Commission.
- o Establishing the Truth, Justice and Reconciliation Commission which will be lead by Ambassador Bethuel Kiplagat and seek outside counsel from international experts.
- o Fortifying the Kenya Anti-Corruption Commission with new commissioners and management to increase its efficacy in dealing with corruption at all levels.
- o Launching the Police Reforms Task Force to drive the process of transforming the police force into a police service.
- o Creating the Committee of Experts on the Constitutional Review to spearhead finalization of the review process.

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Kenyan-Somali Relations

Somalia as a Failed State

Somalia has been plagued by violence and instability since the collapse of its central government in 1991, making it the first completely failed state of the modern era. Their Transitional Federal Government (TFG) was established to provide the country with a new constitution and the means to have legitimate elections in 2009, which resulted in Sharif Sheikh Ahmed's election as president.

Kenya Facilitates Peace Efforts for Somalia

- As a stable political neighbor, Kenya has served as the peace-making facilitator for the Somali transitional state for the last two decades.
- In early 2002, Kenya organized a reconciliation effort under the Inter Government Authority on Development (IGAD) auspices known as the Somalia National Reconciliation Conference.
- In August 2004, Nairobi hosted the Somali Transitional Federal Assembly (TFA) as part of the IGAD-led process. Abdullahi Yusuf Ahmed was elected Transitional Federal President of Somalia on October 10, 2004 and Ali Mohamed Gedi was approved by the Transitional Federal Assembly as Prime Minister on December 24, 2004 as part of the continued formation of a Transitional Federal Government (TFG).

Kenya Provides a Home for Somali Refugees

- Throughout the two decades since the collapse of the Somali government, Kenya has provided temporary homes for tens of thousands of Somali refugees during their transition to other countries of refuge such as the U.S., Canada and many EU nations.
- Dadaab, in eastern Kenya, is home to an estimated 279,000 refugees – mainly Somali refugees - triple its designated capacity.
- Kenya's Dagahaley and Hagadera camps together comprise the largest refugee sites in the world.
- Kenya's attempt to close the Somali-Kenyan border in January 2000 did little to stem the tide. About 7,000 Somali refugees came into the country every month during 2007.
- Today, Kenya is home to more than 260,000 Somali refugees. In 2008 alone, some 62,000 new Somali refugees arrived in Kenya.

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Kenya: World Investment Center

Kenya is a country ripe for economic investment with Nairobi still considered the "primary communication and financial hub of East Africa." It is a leading tea exporter, a competitor in the textile market, a major tourism destination, an agricultural center, and home to one of the largest ports in the world – Mombasa. In addition to its natural gifts, Kenya has a tremendous human resource base – a thriving professional and middle class and an investing business class that has expanded in the region. Kenya continues to make significant strides in reforming corruption in the public sector, which has led to its role as a leader in foreign direct investment in Eastern Africa.

Kenya's Progress

- Kenya is a member of the Millennium Challenge Corporation's (MCC) Threshold Program - focused on reducing public sector corruption by overhauling the public procurement system.
- After just one year in the program, the January 2009 quarterly status report illustrated enthusiasm on the part of the Kenyan government and significant progress toward streamlining the public procurement program and eradicating corruption.
- Through the American Growth and Opportunities Act (AGOA), Kenya has increased exports to the United States dramatically. In 2006, the U.S. was Kenya's third most important export destination.
- In a government plan entitled, "Kenya Vision 2030: A Globally Competitive and Prosperous Kenya," the country has established important long-term economic and humanitarian development goals to transform Kenya into an increasingly industrialized, middle-income country.

Current Foreign Investment in Kenya

In May 2009, the World Bank reinstated its aid to Kenya, \$413 million, through the funding of a number of crucial programs:

- The Northern Corridor Transport Improvement Project (NCTIP)
- The Energy Sector Recovery Project (ESRP)
- The Cash Transfer for Orphans and Vulnerable Children Project
- The Lake Victoria Environmental Management Project II

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Key Investment Opportunities in Kenya

- **Agriculture**- In 2007, horticulture exports from Kenya to the U.S. increased by 65 percent to \$1.12 billion, surpassing tourism as the largest generator of foreign revenue. Tea and coffee products are among the leading exports with tea exports totaling \$638.9 million.
- **Tourism**- Tourism earned Kenya \$972 million in 2007, up from \$803 million in 2006. Today, Kenya is the largest recipient of tourists in East Africa.
- **Textiles**- Kenya benefits significantly from the African Growth and Opportunity Act (AGOA). Currently there are 21 apparel factories and one yarn factory operating in the Export Processing Zones.
- **Business Process Outsourcing** – The impact of the U.S. recession has caused U.S. companies to strategically focus on cost reductions to remain competitive, thus forcing them to relocate abroad. Kenya is strategically placed to take part in the emerging business opportunities thanks to its strong human resource base.